

ESTTA Tracking number: **ESTTA259722**

Filing date: **01/09/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91182064
Party	Plaintiff AS Holdings, Inc.
Correspondence Address	Terence J. Linn Van Dyke, Gardner, Linn & Burkhardt, LLP. 2851 Charlevoix Drive SE, Ste 207 Grand Rapids, MI 49546 UNITED STATES linn@vglb.com, anne@vglb.com
Submission	Other Motions/Papers
Filer's Name	Terence J. Linn
Filer's e-mail	linn@vglb.com, anne@vglb.com
Signature	/Terence J. Linn/
Date	01/09/2009
Attachments	Opposer's Pretrial Disclosures.pdf (6 pages)(252287 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AS HOLDINGS, INC.)
)
Opposer,)
)
v.) Opposition No. 91182064
)
H&C MILCOR, INC. f/k/a)
AQUATICO OF TEXAS, INC.) Serial Number: 76/461,157
) Mark: Miscellaneous Design:
Applicant.) (Pipe Boot Product Design)
)
_____)

OPPOSER AS HOLDINGS, INC.'S PRETRIAL DISCLOSURES

Pursuant to Rule 2.121(e), 37 C.F.R. § 2.121(e), Opposer AS Holdings, Inc. makes the following pretrial disclosures:

Witnesses

Opposer intends to take testimony or may take the testimony if the need arises, from the following witnesses:

1. Christopher Kintzele - 5120 Beck Drive, Elkhart, Indiana, 46516, (574) 295-5206. Chief Financial Officer of AS Holdings, Inc. Mr. Kintzele will likely testify regarding Opposer's activities regarding building products and pipe boots, activities regarding functional attributes of pipe boots, and functional structures and attributes of pipe boots.
2. David Smith, Jr. - 5120 Beck Drive, Elkhart, Indiana, 46516, (574) 295-5206. President and Chairman of the Board of AS Holdings, Inc. Mr. Smith will likely testify regarding the industry and Opposer's activities regarding building products and pipe boots and past activities regarding same, including the initial activities of Opposer regarding pipe boots, previous activities regarding building products, activities regarding functional attributes of pipe boots, and functional structures and attributes of pipe boots.
3. Joseph Merryman- 5120 Beck Drive, Elkhart, Indiana, 46516, (574) 295-5206. A chemist of AS Holdings, Inc. Mr. Smith will likely testify regarding Opposer's activities regarding building products and pipe boots, including the initial activities of Opposer regarding pipe boots, the materials and testing thereof,

activities regarding functional attributes of pipe boots, and functional structures and attributes of pipe boots.

4. Michael Hubbard - 5120 Beck Drive, Elkhart, Indiana, 46516, (574) 295-5206. A chemist of AS Holdings, Inc. Mr. Hubbard will likely testify regarding the functionality, operation, installation and structure of pipe boots, the benefits thereof and past and present use in industry and by competitors, patents reflecting functional attributes of pipe boots, the non-distinctive aspects of the elements alleged to be indicia of origin of Applicant's pipe boots, activities regarding functional attributes of pipe boots, and functional structures and attributes of pipe boots.

Exhibits

Opposer intends to rely or may rely if the need arises on the following exhibits with each of the preceding witnesses:

1. File History of Application Serial No. 76/461,157
2. Opposer's Deposition Exhibits previously identified as follows:

Opposer's 1		Second ReNotice of Deposition of Applicant Pursuant to Fed.R.Civ.P. 30(b)(6)
Opposer's 2		Portals Plus Product Catalog
Opposer's 3		Portals Plus Medium Pipe Boot Specification ALP00476 – Marketing Brochure from website?
Opposer's 4		Portals Plus Medium Pipe Boot Specification ALP00476 – Website? With hand drawing on it
Opposer's 5		Milcor and Portals Plus Ad from Snips publication dated January 2008; Vol 77, No. 1
Opposer's 6		Portals Plus Installation Instructions - ALP00479 From Portals Plus website?
Opposer's 7		Excerpts from websites for Milcor and Portals Plus ALP00458 - ALP00462
Opposer's 8		Product List from Portals Plus website ALP00463 – ALP00472
Opposer's 9		Portals Plus Pipe Flashings Technical Product Information from website ALP00473 – ALP00478
Opposer's 10		Portals Plus Adapter Rings Technical Product Information from website ALP00480 – ALP00481
Opposer's 11		Drawing and description from application file
Opposer's 12		U.S. Patent No. 4,211,423 Resech for Roof Seal

		Device; ALP00209 – ALP00216
Opposer's 13		Portals Plus Installation Instructions for Pipe Boots
Opposer's 14		Hand drawn sketch of left side of pipe boot by Dillis Allen with blue points A and B added by TJL
Opposer's 20		1 color photograph of 13-inch base pipe boot with stamp of "ALPHA SYSTEMS EPDM 1" on the base
Opposer's 21		1 color photograph depicting base of black pipe boot with stamping of "CUT ABOVE RIB"
Opposer's 22		1 color photograph depicting white pipe boot
Opposer's 23		1 color photograph depicting black pipe boot with the stamping "BFDP EPDM" on the bottom horizontal ring
Opposer's 24		1 color photograph depicting small black pipe boot with the stamping of "ALPHA SYSTEMS EPDM 2"
Opposer's 25		1 color photograph of black pipe boot with the stamping on the base of "cut above rib"
Opposer's 26		1 color photograph of base of black pipe boot with stamping of "CUT ABOVE RIB"
Opposer's 27		1 color photograph of black pipe boot with the stamping on base "FBPCO"
Opposer's 28		1 color photograph of black pipe boot with the stamping on base "pipe flashing ½-1-1 ½-2 ½ epdm"
Opposer's 29		9-pages, print-out of GenFlex Roofing Systems website pages
Opposer's 30		18-pages, U.S. Patents of Michael J. Hubbard
Opposer's 31		5-pages, Firestone Technical information sheets for pipe boots and flashings
Opposer's 32		Color photograph of physical exhibit Defendant's No. 4 – depicting with clamp
Opposer's 33		Color photograph of Defendant's Exhibit 4, depicting with clamp
Opposer's 34		Color photograph depicting Defendant's physical Exhibit 2 with clamp
Opposer's 35		Color photograph of Defendant's physical exhibit 2 with clamp
Opposer's 36		Color photograph of Defendant's physical Exhibit 3, depicting clamp placement
Opposer's 37		Color photograph of Defendant's physical exhibits 2 and 3
Opposer's 38		Color photograph of Defendant's physical exhibit No. 4, with clamp placement

3. Applicant's Deposition Exhibits previously identified as follows:

Applicant's 1 (Steimle Dep)		Hand drawn sketch of left side of pipe boot by Dillis Allen
Applicant's 1		White 13-inch base pipe boot with stamping on base of "Alpha Systems EPDM 1"
Applicant's 2		Black, 13-inch base pipe boot with stamping on base of "Alpha Systems EPDM 1"
Applicant's 3		Black, 9-inch base pipe boot with the stamping on base "Alpha Systems EPDM 2"
Applicant's 4		Black, 13-inch base pipe boot with stamping on the bottom horizontal circumference of "BFDP EPDM"
Applicant's 5		Black, 9-inch base pipe boot with the stamping of "BFPCO" and "PIPE FLASHING ½-1-1 ½-2 ½, EPDM"
Applicant's 6		1-color photograph of pipe boot stamped "PFDP EPDM" on bottom horizontal circumference
Applicant's 7		1 color photograph of pipe boot, 13-inch base depicting stamp on base "Alpha Systems EPDM 1"
Applicant's 8		1 color photograph of white 13-inch base pipe boot
Applicant's 9		1-page, hand drawn document depicting steps on pipe boot, dated 11-12-08, Labeled "Exh A"
Applicant's 10		1-page, document labeled as "Exh B", dated 11 (12 13) 08, hand-drawn diagram depicting steps of pipe boot
Applicant's 11		26-pages, documents marked "Confidential" "TradeSecret" from Maple Mold Technologies
Applicant's 12		52-pages, Portals Plus web-site print-outs
Applicant's 13		222-pages, United States Patents on various seals for roof vent pipes or similar articles
Applicant's 14		21-pages, purchasing specifications from Firestone Specialty Products to Alpha Systems
Applicant's 15		1-page, hand drawing of EPDM, TPO & PVC for GenFlex Mold Types by Mr. Hubbard

4. Other documents produced by Opposer

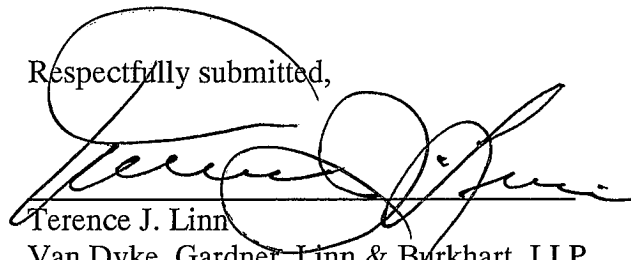
U.S. Patent No. 5,988,698 (ALP00217 – 00231)
U.S. Patent No. 5,826,919 (ALP00232 – 00246)
U.S. Patent No. 4,664,390 (ALP00247 – 00252)
U.S. Patent No. 5,176,408 (ALP00253 – 00263)
U.S. Patent No. 4,570,943 (ALP00270 – 00276)
U.S. Des. 269,454 (ALP00277 – 00279)
U.S. Patent No. 3,807,110 (ALP00280 – 00284)
U.S. Patent No. 4,010,578 (ALP00285 – 00288)
U.S. Patent No. 6,640,503 (ALP00309 – 00337)
U.S. Patent No. 6,591,561 (ALP00338 – 00358)
U.S. Patent No. 6,362,427 (ALP00359 – 00370)
U.S. Patent No. 4,676,513 (ALP00399 – 00406)

Deposition Witnesses and Exhibits

Opposer intends to rely on Deposition testimony of the following witnesses deposed pursuant to Fed.R.Civ.30(b)(6)

1. Sean Steimle, Vice President of Hart & Cooley, Inc. on behalf of Applicant AS Holdings, Inc..
2. Opposer intends to rely or may rely if the need arises on the documents identified as Opposer's Deposition Exhibits 1 through 14 with the deposition witness Mr. Steimle.

Respectfully submitted,



Dated: January 9, 2009

Terence J. Linn
Van Dyke, Gardner, Linn & Burkhart, LLP
2851 Charlevoix Drive SE, Suite 207
Grand Rapids, MI 49546
(616) 975-5500
Attorney for Opposer

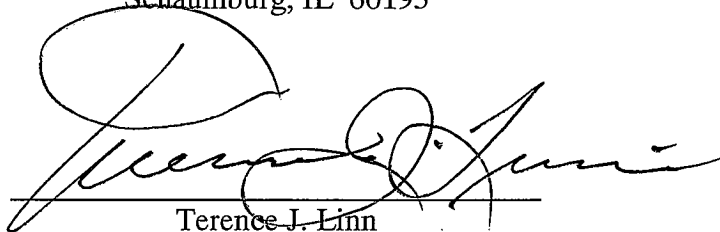
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AS HOLDINGS, INC.)	
)	
Opposer,)	
)	
v.)	Opposition No. 91182064
)	
H&C MILCOR, INC. f/k/a)	
AQUATICO OF TEXAS, INC.)	Serial Number: 76/461,157
)	Mark: Miscellaneous Design:
Applicant.)	(Pipe Boot Product Design)
_____)	

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2009, a true and correct copy of Opposer's AS Holdings Inc.'s Pretrial Disclosures was sent via First Class Mail, postage prepaid to Attorney for Applicant as follows:

Dillis V. Allen
105 S Roselle Rd, Suite 101
Schaumburg, IL 60193



Terence J. Linn